April 2013

AgForce Submission

Agriculture, Resources and Environment Committee regarding the Land, Water and Other Legislation Amendment Bill 2013

AGFORCE

Thank you for the opportunity to make a submission to the Agriculture, Resources and Environment Committee regarding the Land, Water and Other Legislation Amendment Bill 2013.

AgForce is the peak lobby group representing the majority of beef, sheep and wool, and grain producers in Queensland. AgForce represents around 6,000 members and exists to ensure the long term growth, viability, competitiveness and profitability of these industries. Our members provide high quality food and fibre products to Australian and overseas consumers, manage a significant proportion of Queensland's natural resources and contribute significantly to the social fabric of rural and remote communities.

On 5 March 2013, Hon Andrew Cripps MP, Minister for Natural Resources and Mines, introduced the Land, Water and Other Legislation Amendment Bill 2013 (the Bill) which has been referred to the. The Bill has seven major policy objectives which include:

- progressing the recommendations of the Queensland Floods Commission of Inquiry that relate to levees
- reduce red tape and regulation
- facilitate the conversion of water authorities to two tier co-operative structures
- address concerns about the Mines Legislation (Streamlining) Amendment Act 2012 regarding pipelines carrying produced water
- Implement a number of other miscellaneous amendments to address operational issues necessary to provide for continued effective implementation of a range of legislation.

Water related amendments

Generally AgForce welcomes the reforms proposed within the Bill as representing a streamlining of the system for managing agriculturally relevant water resources within the state and will have a positive impact on our membership. AgForce makes this submission to assist the Agriculture, Resources and Environment Committee in its deliberations about the Bill and provides further comment on specific amendments in the sections below.

Levee Regulation

The Bill amends the *Water Act 2000* towards developing a consistent framework to regulate the construction of new levees and the modification of existing levees. This is intended (s967) for the purpose of minimising the adverse impacts these levees could have on overland flow water, the catchment, and landholders. AgForce are supportive of moves to manage impacts of future levee installation on landholders and other stakeholders within catchments.

We would like to highlight that these amendments will not address the historical issues surrounding suspected impacts from existing, legally-installed levees, such as may occur in the lower Balonne floodplain. We would not advocate a retrospective application that would disadvantage a person who legally constructed a levee in accordance with the law as it stood at the time of construction. However, we would request that the Government look to examine these historical issues in more detail, such as through hydrological studies in areas where impacts are suspected to occur, and seek to facilitate a resolution to these issues. Outlined in the explanatory notes, Provision 972J only relates to levees constructed or modified after the commencement of this Bill and so is not expected to apply to these existing levees.

s306 (2) outlines a definition of levee as an artificial embankment or wall which excludes, controls or regulates the movement of overland flow water. AgForce welcomes the exclusion of standard agricultural activities (cultivation, clearing, crop or pasture establishment, laser leveling etc.) and irrigation infrastructure (including storages and distribution) from this definition of levee, given that

these standard activities undertaken by landholders in the management of their property will have only a minimal impact on water flows.

AgForce would recommend that there is an appropriate stakeholder consultation process in the development of the supporting regulations and the codes and additional criteria for levee assessment (s 967). Enabling different categories of levees is supported in order to ensure proportionate levels of assessment can be applied based on appropriate risk assessments (s 969).

Extending the term of water licenses

The Bill (s 262) seeks to extend all current water licences to 30 June 2111 and all new water licences will be granted until that date (i.e. 99 years) unless otherwise stated by a WRP or ROP or Wild Rivers declaration. This amendment will reduce the regulatory and cost burden on water license holders and AgForce supports this amendment. Given that water resource plans (WRPs) and resource operations plans (ROPs) are the principal water planning mechanism for ensuring the sustainable management and allocation of water in Queensland, it is unnecessary for the Government to utilise licence renewals to achieve natural resource management objectives.

Postponing expiry of water resource plans

Under the *Water Act 2000*, the Minister must plan for the allocation and sustainable management of water to meet Queensland's water requirements, which requires preparing WRPs and ROPs. The Bill proposes that the water resource planning provisions of the Water Act be amended to remove WRPs from the automatic expiry provisions (s 230) and to allow the Minister to postpone the expiry of a WRP for up to a total of 10 years. AgForce are not opposed to the additional flexibility that this amendment would bring to the Government and enable greater focus to be brought on those WRPs that may not be achieving their purposes, so that improved planning outcomes can be achieved. A 20-year maximum period of WRP operation appears appropriate.

Given the time periods WRPs operate under and the need to clearly identify if the WRP is achieving its objectives, including any adverse effects of postponement on entitlement holders or the environment, AgForce would submit that a minimum 20-day public consultation period is not sufficient to do this fully and that 30 business days would be preferable. The submissions process is vital in determining if a WRP is still relevant and appropriate and to enable stakeholders to identify to Government any adverse effects that are occurring.

The proposed amendment under s 230 includes new ss 52B (6) that the Minister may decide to postpone the expiry if '*the Minister reasonably believes the postponement will not adversely affect water entitlement holders or natural ecosystems in the plan area'*. For clarity this wording should be such that a full 'triple bottom line' assessment is clearly intended rather than an examination of either the entitlement holders or the environment.

Removing the requirement for a water license for associated water

Currently a petroleum tenure holder may provide associated water to a landholder whose land overlaps the petroleum tenure, however a water licence is required if the water is provided to another landholder whose property does not overlap the tenure. The requirement for water licences is seen as no longer valid due to the evolution of the adaptive management framework for petroleum activities since 2004 when Chapter 3 of the *Water Act 2000* was enacted. AgForce does not support an adaptive management approach to CSG development and has called for a moratorium on CSG development until the potential impacts in the area of extraction are scientifically understood. These concerns have been justified further by the findings of the IESC about the Arrow EIS with respect to adequacy of risk management for underground water impacts. The *Petroleum and Gas (Production and Safety) Act 2004* does not limit the volume of water that

may be taken under the underground water rights (s 185 (3)) and this Bill seeks to amend the Act to allow the tenure holder to use associated water for any purpose, not just authorised uses, both on and off tenure.

Water licensing is seen as one way by which the Government can guide the integration and management of this produced water within the broader water resource planning process, as this is not captured in the adaptive management framework. The current Government policy for beneficial use refers to statutory consultation processes with local stakeholders by a company in determining how the water might be beneficially used. However there is no obligation on a company to ensure that the greatest benefit to the community at a regional level is achieved from the use of this unrestricted volume of produced underground water, for example by coordinating with the water management processes of other companies. Chapter 3 only applies 'make good' provisions at the bore and not to the aquifer itself and these provisions do not enjoy widespread community confidence that they are capable of addressing longer term (post-tenure) or large scale damage to aquifers.

Prior to this amendment within the Bill being adopted, AgForce would call for a review of Chapter 3 of the Water Act and the establishment of a process by which produced water is integrated into the broader water planning framework.

Removing the requirement for licences to interfere for watercourse diversions associated with resource activities

The Bill provides that diversion-type interference works associated with a resource activity would be exempt under a revised s 20 from requiring a water licence if the works are authorised under an Environmental Authority (EA) under the *Environmental Protection Act 1994 (*EP Act). The EA will authorise that water diversion works take place, subject to statements of compliance being given for both the design and the construction of the diversion. This is necessary to ensure that the works meets the criteria to maintain the environmental values of the site, and to ensure that the works are constructed accordingly.

AgForce would stress that the conditioning within the EA must effectively account for and avoid third party impacts, including on downstream primary producers, as well as other environmental impacts within the catchment. This will require a coordinated approach between the DNRM and DEHP to ensure that the outcomes achieved by current licensing within the Water Act are all translated across into the EA authorisation process.

Removing the requirement for a riverine protection permit to destroy vegetation

The Bill proposes to amend the Water Act to remove the requirement for a riverine protection permit to destroy vegetation in a watercourse, lake or spring, so that clearing is solely regulated under the framework provided in the *Vegetation Management Act 1999* and the *Sustainable Planning Act 2009*. A person will still be required to obtain a riverine protection permit to excavate or place fill in a watercourse, lake or spring, which includes vegetative material below the surface which plays an important role in bank stability.

AgForce supports this amendment to significantly simplify the regulation of vegetation management by bringing it under a single umbrella while retaining protections of sustainability and bank stability.

Removing land and water management plans

The amendment (s 232) will remove the requirement for entitlement holders proposing to undertake irrigation to prepare property-scale land and water management plans (LWMPs). AgForce

is supportive of the amendment in order to reduce the regulatory burden on irrigators and place greater emphasis on individual management of any property-level environmental risks.

Primary production industries, including beef and grains, are proactively implementing best management practice (BMP) programs that encourage sustainable practices and a voluntary, education-based approach to these issues. This is seen as preferable to a complex regulatory approach and the capacity of the Government to implement targeted water use plans to manage impact risks on a landscape scale will be retained and this is appropriate for managing any particular high-risk areas.

Removing Declared Catchment Areas

As for LWMPs, AgForce supports the removal under s 264 of Declared Catchment Areas (DCAs) as an inactive mechanism to control land use activities that may have an adverse impact on water quality in a water storage, lake or groundwater area. The provisions duplicate the role of planning schemes, local planning policies, other Sustainable Planning Act instruments, and the Environmental Protection Act, e.g. intensive animal industries. This removal reduces duplication and red tape.

Exempting certain low risk activities from requiring an authorisation

Section 20 of the Water Act authorises the take of water without a water entitlement in limited circumstances where the activity is seen as of low risk to sustainable water resource management. These include water for camping and travelling stock, interfering with overland flow or sub-artesian water (unless otherwise regulated under a moratorium, WRP or wild rivers declaration), and riparian access and overland flow collection for stock and domestic water. The amendment (s 290) seeks to extend these exemptions. AgForce supports including the take of water for firefighting purposes generally and for carrying out certain activities prescribed under a regulation (e.g. dairy wash downs, weed wash downs, filling chemical spray units) as a commonsense approach to these urgent activities. We are also supportive of the extension of the exemptions applied to stock and domestic use to where there is water collected in a dam and stock lawfully accesses the foreshore, and also to adjoining lands within the same ownership.

The provision of water to an Aboriginal party or Torres Strait Islander party for cultural purposes should ensure that it does not result in adverse third party impacts on existing water right, allocation and entitlement holders in a catchment, including indigenous landholders. We welcome the clarifying statement under s 290 (20B (2)) of the Bill that indicates that a cultural purpose does not include a commercial activity. Indigenous water entitlements for contemporary economic use should be acquired using existing market mechanisms as for other contemporary economic uses, including agriculture. Further, the community must have confidence that resource sector environmental authority assessments around watercourse diversions are undertaken by the relevant departments in a comprehensive and deliberate manner and that development is appropriately conditioned to minimise adverse impacts.

AgForce are generally supportive of the proposed amendments within the Bill to Section 20 of the Water Act as enabling greater flexibility and access without additional administration requirements.

Providing flexibility when publishing public notices

The Water Act prescribes the circumstances and methodologies whereby public notification is required on water planning and management activities. This includes publication in a newspaper of an application for a water licence at the cost of the applicant. The Bill amends the definition of 'publish' to provide departments with the flexibility to tailor the notification method to the intended audience and ease the regulatory burden on the departments and clients. AgForce supports these amendments as long as departmental and Chief Executive considerations accommodate the local

conditions and needs of the intended audience, including accounting for the limitations on electronic communications that exist in in some rural and remote areas of the state. The end goal should be that the effectiveness of communications should be increased, rather than solely focusing on cost reductions.

Dealing with surrendered or forfeited interim water allocations

Interim water allocations managed under a Resource Operations License may be forfeited or surrendered and are required to be dealt with as if they were forfeited water allocations. Forfeited water allocations are mandated to be sold but this is not always desirable, for example, where a particular supply scheme is over allocated and the preference would be to cancel the interim water allocation, potentially increasing the reliability of supply for other users in the water supply scheme.

The amendments in the Bill will provide flexibility by creating alternative option/s to the current mandatory requirement to sell them. AgForce would support this amendment where the process is equitable to existing water holders involved in the supply scheme, including not disproportionately increasing their cost of water supply.

Conversion of Water Authorities to two tier co-operative structures

Currently the *Water Act 2000* and *Water Supply (Safety and Reliability) Act 2008* do not sufficiently accommodate conversion of a water authority into two separate entities, where one entity owns infrastructure while the other operates the infrastructure and provides services to customers. In response to proposals from a number of water authorities to transition to a two tier cooperative structure involving a holding co-operative (which would own the water infrastructure) and a trading co-operative (which would provide water services to entitlement holders within the supply scheme) the two Acts are being amended.

The amendments outlined provide for an alternative structure using an 'opt in' approach while retaining the capacity for Category 2 boards to not have to transition to a two tier arrangement. The capacity for the chief executive to examine the infrastructure holder's capacity to take over the DOL should the arrangement break down will work towards protecting the interests of supplied water users. On this basis AgForce are supportive of the proposed amendments.

Other amendments to the Water Act

As Section 223 of the Water Act is currently drafted, an applicant whose water licence is not managed under a WRP is required to make a separate application to amend or amalgamate their existing licence with a transferred licence. This limitation was not intended. The Bill (s 263) amends Section 223 to enable the Department to give effect to the transfer of a water licence through a single application and assessment process, saving applicants the time and costs associated with a separate amendment and/or amalgamation application. This streamlining is supported.

Amendments to section 1007 seek to remove the need for grants of water licences and interim water allocations to be noted on the land titles register in order to reduce duplication as this information is available by searching the water entitlements registration database at a cost. This amendment has implications for future data collection to support the national register of foreign ownership of agricultural land should it be extended to include water assets. AgForce has supported the inclusion of water assets in the national register and would like to highlight this potential issue to the Committee during its deliberations on this amendment.

Amendments to Petroleum Act 1923 and Petroleum and Gas (Production & Safety) Act 2004 in relation to conversion of petroleum wells to water bores

The *Petroleum and Gas (Production and Safety) Act 2004* and the *Petroleum Act 1923* currently prescribe that only water supply bores and water observation bores may be transferred to a landholder during the term of the petroleum tenure; and only properly decommissioned petroleum wells (converted to a water supply or observation bore) may be transferred after the petroleum tenure ends. The proposed amendments will streamline the process for the conversion of petroleum wells by extending the conversion to include petroleum well drillers (not only licensed water bore drillers), addressing safety and environmental matters and clarifying some administrative elements of conversion. The Bill indicates that simplifying the conversion process is likely to result in more petroleum wells being converted to water bores, benefitting the community by providing landholders with ready access to water, without the landholder having to specifically pay for the drilling of a water bore. Where this is accompanied by appropriate oversight of ongoing safety and water quality outcomes and a scientific understanding of the potential impacts on aquifers and other water users, these outcomes could be positive for primary producer landholders.

Protecting the integrity of underground aquifers and surface environments and the health and safety of landowners who might use converted wells is of paramount concern to AgForce. It is vital that the long term integrity of operating and decommissioned and converted petroleum wells is ensured so that interconnection between coal seams and aquifers does not occur and water quality appropriate for landholder use is maintained. Where the statement by the well holder transferring the bore that it has been drilled to comply with the appropriate regulations is subsequently shown to be inaccurate and the well integrity compromised then the responsibility for achieving a proper conversion should remain with the well holder not the landholder. Compliance with the regulations and codes for conversion must be accompanied by transparent oversight and auditing by the Government. This should extend to the integrity of wells established prior to 1 January 2012.

As part of the reform process, AgForce supports the establishment of a small committee, administered by DNRM, to provide a forum by which current and emerging issues regarding well conversion can be addressed over both the short and longer term. This advisory committee could be comprised of tenure holders, drillers, departmental staff, landholders or their representatives, environmental interests and water drillers to ensure an appropriate mix of expertise and interests and transparency. They would have a role in monitoring conversion compliance with the appropriate regulations and the application and regular updating of the *Code of Practice for Constructing and Abandoning CSG wells in Queensland*. It is suggested that the Agriculture, Resources and Environment Committee consider the establishment of such a group in support of the implementation of the proposed amendments.

***Land Act 1994* amendments**

Removal of Closer Settlement Provisions

The Bill proposes the removal of a Chief Executive requirement to consider whether all or parts of leasehold land is required for property build-up purposes by removing the living area standards. As AgForce outlined in the submission to the 2012 Parliamentary review into government-owned tenure, the living areas calculations have not been reviewed in over 15 years, and have therefore failed to take into account a range of recent factors such as the increase in productivity and profitability on some individual tenures, terms of trade and the need to spread fixed costs. AgForce supports the removal of the provision and agrees with the principle of allowing the market to decide the most appropriate size of pastoral properties.

Amending when rent is owing (s190)
AgForce supports the amendment which will confirm that no rent is imposed on a lessee where they have paid the purchase price for the land and fulfilled all conditions of an offer to freehold. This amendment will ensure that lessees are not paying for the property twice.

Short Term Extensions
The Parliamentary Committee into Government Owned Land (the Tenure Review) has created uncertainty amongst lessees about whether tenure conversion will be a realistic long term solution for their enterprise. This uncertainty may manifest in delays to commence lease renewal processes and for this reason AgForce supports the amendment to provide for two year lease extensions.

Removal of the Future Conservation Area Provision
The Future Conservation Areas (FCA) policy implemented in 2008 has created enormous angst amongst lessees by providing a power to allow the environment department to not renew leases on some of the best cared for areas of leasehold estate. AgForce has always maintained that properties that are identified for future conservation purposes should be paid for by the government on the open market and so supports this move to provide more certainty for lessees.

Land management agreement for rural leases
On the basis of improved cost and time efficiencies, AgForce is supportive of the move to increase the threshold size of properties requiring Land Management Agreements (LMAs) from 100 hectares to 1000 hectares.
As the explanatory memoranda outlines however, the proposed amendment will result in the loss of lessee's ability to apply for a lease extension under Chapter 4, part 3, division 1B of the *Land Act 1994*. While this could be perceived as a negative by some lessees, AgForce believes that on the balance of things, greater benefit is incurred in not mandating LMAs and the cost and time efficiencies that this provides.
Another proposed amendment will allow the Minister the discretion to require a land management agreement for rural leasehold land where

- It is considered vulnerable to land degradation;
- Where there are demonstrated land degradation issues which require remediation; or
- Where the lessee is using the lease land in a way that is not fulfilling the lessee's duty of care for the land, under section 199.

While AgForce appreciates that all landholders have an existing duty of care under the Act, AgForce seeks more discussion with the Department about practical examples of where this will provision might be enforced so as to provide certainty and surety to lessees.

Proposed Land Valuation Act 2010 (LVA) Amendments

Market Survey Reports
Given the paucity of annual land sales data that can utilised for annual land revaluations, AgForce supports the formal amendment that will allow the State Valuation Service (SVS) flexibility to create a market survey report which includes sales that have occurred outside of a particular local government area. This amendment formally endorses an approach which AgForce understands has been occurring for a number of years.

Other LVA Amendments
AgForce is supportive of all other LVA amendments as outlined in the Land and Other Legislation Amendment Bill 2013.